IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 915 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATE OF GUJARAT

Versus

SHAH SANJAYKUMAR K

Appearance:

MS BR GAJJAR ADDL. PUBLIC PROSECUTOR for Petitioner

MR JD AJMERA for Respondent No. 1-3

MR JT TRIVEDI for Respondent No. 4

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 25/02/2000

C.A.V. JUDGEMENT

#. This is an appeal under Section 378(1) of the Cr.P.C. filed by the State of Gujarat against the acquittal order by the learned Chief Judicial Magistrate, Surendranagar by rendering his judgment, Exh. 138 dated 31-7-1990 in Criminal Case No. 971 of 1989 which was on his file.

#. The respondents were accused in Criminal Case No. 971 of 1989. Originally when the complainant Shri Pravinchandra Vakhatsinh Sanghvi lodged his private complaint in the Court of the Chief Judicial Magistrate, Surendranagar, he had cited present first three respondents as accused Nos. 3, 1 and 2 respectively in his complaint. The names of present respondents are stated in Appeal Memo according to names stated in the Judgment, Exh. 138. The complainant lodged his private complaint against first three respondents in the Court of the Chief Judicial Magistrate, Surendranagar and as per that order below that complaint, that complaint was sent under Section 156(3) of the Cr.P.C. 1973 to the Police Inspector, Surendranagar for investigation. On completion of investigation charge-sheet was filed and in that charge-sheet present respondent No.4 was also shown as accused No.4. Therefore for the sake of convenience the parties will be referred to as the complainant and accused hereinafter.

#. The facts leading to this present appeal in a nut shell are as follows:-

As per the title of the Exh. 138, accused No.1 and 2 are the real brothers, accused No.3 is an uncle of accused Nos. 1 and 2.

The complainant Shri Pravinchandra Vakhatsinh Sanghvi entered into a partnership firm named `Lucky Sigar Agency' and for that a partnership deed dated 30-1-1985 (Exh. 39) was executed by the partners. It is the case of the complainant that one Kanchanben, mother of accused No.1 and 2 was also partner in the said partnership firm, and that present complainant and Smt. Kanchanben Kushaldas Shah were the sleeping partners. According to him, accused Nos. 1 to 3 are related to each other and the complainant is not related to any of the accused.

It is the case of the complainant that on or about 11-2-1985, the partnership firm through its partners got opened one Current Deposit Account in the name of said Firm with Union Bank of India, Surendranagar, and at that point of time, requisite documents were filled-in and signed by the partners and

were submitted to the bank authorities.

It is further the case of the complainant that on 18-11-1985, accused No. 1 to 3 got opened one Cash Credit Account in the name of said Partnership Firm with the said Union Bank of India and at that point of time, accused No. 4 was a Manager of the said Bank. It is the case of the prosecution that accused Nos. 1 to 3 prepared false documents by signing the documents in the name of complainant and they committed forgery by preparing false documents and used those forged documents as genuine for the purpose of cheating. It is the case of the prosecution that on or about 18-11-1985, four documents were thus forged and then submitted to the Union Bank of India for getting opened a Cash Credit Account in the name of Partnership Firm and by getting opened that Cash Credit Account, they obtained an advance of Rs. 2,50,000/- and out of that amount of Rs. 2,50,000/-, an amount of Rs. 1,25,000/- was credited in the books of accounts of the Partnership Firm and rest of the amount was transferred to an account of `Jai Bhavani Ceramics" which is the ownership of accused Nos. 1 to 3.

In the year 1987 the complainant came to know that accused Nos. 1 to 3 have taken a loan of Rs.2,50,000/- from the Union Bank of India by getting opened a Cash Credit Account. He also came to know that some mismanagement was done by accused Nos. 1 to 3 in the affairs of said Partnership Firm, and therefore, the complainant gave one notice dated 1-7-1987 (Exh. 56) to accused Nos. 1 to 3. It is further the case of the complainant that accused Nos. 1 to 3 did not comply with the notice dated 1-7-1987 and therefore he wrote one letter dated 14-9-1987 to the Union Bank of India and requested to furnish him the copies of documents submitted by accused Nos. 1 to 3 for getting opened a Cash Credit Account in the name of said Partnership Firm. It is further the case of the complainant that said Bank furnished copies of documents to the complainant. He also took an inspection of the documents by personally visiting the Bank on 18-9-1987 and on receiving the copies of the documents and on taking inspection of documents he came to know that documents which were submitted to Bank by accused Nos. 1 to 3 were containing signatures in the name of Shri P.V. Sanghvi, but in fact those signatures are not of complainant and therefore it is the case of the complainant that with a view to get opened a Cash Credit Account in the name of Partnership Firm, accused Nos. 1 to 3 prepared false documents, and committed forgery for the purpose of cheating the Union Bank of India. He lodged the complaint Exh. 1 on

24-11-1987 in the Court of the Chief Judicial Magistrate, Surendranagar. That complaint was lodged only against accused Nos. 1 to 3, i.e., the partners of the plaintiff Partnership Firm other than Kanchanben. That complaint was sent for investigation under Section 156(3) to the Police Inspector, Surendranagar and on police investigation being completed the Police Inspector, Surendranagar filed a charge-sheet against the present accused Nos. 1 to 3 along with the Manager of the Union Bank of India who is cited as accused No.4. It is the case of the prosecution that as per the charge-sheet, case against accused No.4 is of aiding and abating commission of the offences committed by accused Nos. 1 to 3. That charge-sheet was filed on 18-4-1989 for the offences punishable under Section 467, 468 and 471 of the I.P.C.

Thereafter charge Exh. 18 was framed against accused No.1 to 4 on 25-9-1989 and that charge was framed for offences punishable under Sections 420, 466, 468, 471 read with Section 114 of the I.P.C. After the said charge was framed on 25-9-1989, accused No.4 the Manager of Union Bank of India preferred Miscellaneous Criminal Application No. 352 of 1980 for revision to this Court and by filing that Revision Application, he requested this Court to quash and set aside the proceedings in Criminal Case No. 971 of 1989. This Court (Coram : B.S.Kapadia, J) by its order dated 16-2-1990 dismissed that Criminal Revision Application. That order of this Court is on the record at Exh. 35.

In support of the case for which charge has been framed, prosecution examined in all 11 witnesses and produced number of documents. After the evidence of prosecution was declared to be closed, further statements of accused Nos. 1 to 4 were recorded and accused No.1 to 3 have submitted their written-replies, Exh. 132, 133, 134 in their respective further statements. As per the cross-examination of complainant, it is the defence of the accused that four documents which are in dispute bear the signature of complainant and Cash Credit Account was opened within the knowledge and information of the complainant and that complainant has lodged this false case against the accused to get himself absolved from the liability to pay the debt due to the Union Bank of India. It is the case of the accused Nos. 1 to 3 that the Bank has filed one Civil Suit No. 57 of 1988 in the Civil Court at Surendranagar for recovery of an amount of loan due from the partnership firm to the Bank. It is also the case of the accused that complainant has filed one Civil Suit No. 16 of 1988 for dissolution of partnership

and also for taking accounts of Partnership Firm and that both suits are pending and therefore to bring a pressure on them, the complainant has filed this false case.

After appreciating the evidence on record and after hearing both the parties, the learned Chief Judicial Magistrate came to the conclusion that prosecution has not proved the case against the accused beyond reasonable doubt, and he arrived at a decision that the case against the accused for offences punishable under Sections 467, 468, and 471 of I.P.C. is not proved as per the case advanced by the complainant and by rendering his Judgment Exh. 138 on 31-7-1990, he acquitted all the accused for the offences for which a charge-sheet was framed.

Being dissatisfied with and aggrieved against the side order of acquittal under Judgment Exh. 137 dated 31-7-1990, the State of Gujarat has filed this present acquittal appeal.

#. I have gone through the R&P of the case of the lower Court. I have heard Ms. B.R Gajjar, learned A.P.P. for the appellant, Shri J.D. Ajmera, learned advocate for respondents Nos. 1 to 3 and Shri J.T. Trivedi, learned advocate for accused No.4, in detail at length.

#. During the course of arguments Shri Ajmera, learned advocate for the respondents Nos. 1 to 3 adopted the arguments of Shri J.T Trivedi, who advanced his arguments for respondent No.4.

#. Here in the present case, the decision of the learned Chief Judicial Magistrate, Surendranagar rests on evidence of Handwriting Expert who examined an admitted original natural document bearing the signature of the present complainant and the signatures of accused No. 1 to 4 taken by the Investigating Officer separately in the presence of Panch witnesses.

As per the case of the prosecution an admitted document of natural signature of complainant is Exh. 48 for which complainant has deposed in paragraph 26 of his evidence recorded at Exh. 36 that document Mark C which was shown to him was bearing his signature. He also deposed that the said document was also bearing the signatures of accused Nos. 1 to 3 and Kanchanben, mother of accused No.1 and 2 and that natural document is at Exh. 48. That document Exh. 48 was produced by the Witness No. 2 Pramodrai Haridas Parekh, who has been examined at Exh. 67. He was Branch Manager of Union

Bank of India, Surendranagar for the period from 6-5-1985 to July 1988. Present accused No.4 was the predecessor of this Pramodrai in same Union Bank of India. As per the evidence of Investigating Officer, Police Sub-Inspector Shri Shukla, Exh. 130 on 7-12-1987 he recorded statement of said Shri P.H. Parekh who is examined by the prosecution as witness No.2 at Exh. 67 and while recording the police statement said Promodrai produced certain documents which were seized under Panchnamas. That document, Exh. 48 was produced by witness No.2 P.H. Parekh on 7-12-1987 and it was seized by the Investigating Officer in presence of Panch Witnesses under Panchnama Exh. 101. As per the case of the prosecution this document, Exh. 48 is an undertaking of the partners of the Partnership Firm given to the Union Bank of India, when partnership firm had first got opened Current Deposit Account on 11-2-1985. At that time, the partners of Partnership Firm had executed documents Exh. 57, 58 and 59 along with said undertaking Exh. 48. There is no dispute with regard to fact of opening of Current Deposit account by the Partnership Firm on 11-2-1985 with Union Bank of India from side of complainant. As per the case of the prosecution that documents Exh. 57 to 59 and Exh. 48 were bearing the signatures of complainant. It may be noted that for the purpose of sending disputed documents and admitted documents to the Handwriting Expert, the Investigating Officer has not obtained signatures of complainant in presence of Panch witnesses. P.W. 2 P.H. Parkeh produced those documents and Investigating Officer accepted it as if Exh. 48 is bearing a natural and genuine signature of complainant.

For comparison of original and natural signature of complainant with those disputed four documents Exh. 44 to 47 which were submitted to the Bank for getting opened a Cash Credit Account, the Investigating Officer took specimen signatures of four accused separately. As per the case of the prosecution the Investigating Officer took specimen signatures of each accused on six separate paper-sheets each containing six specimen signatures. The Investigating Officer took specimen signatures of each accused by asking him to sign as "P.V. Sanghvi" six times on each sheet.

As per the case of the prosecution, on 12-3-1988 Investigating Officer took specimen signatures from Accused No.1, Sanjaykumar Kushalchand Shah under Panchnama exh. 89. Such specimen signatures were taken on six paper-sheets which are marked as Mark B-7 to B-12 and each such paper sheet was containing six specimen

signatures of Sanjaykumar Kushaldas Shah, who was asked to sign "P.V. Sanghvi" in presence of Panch Witnesses. Those paper-sheets bearing specimen signatures of accused No.1 Sanjaykumar Kushaldas Shah are at Exh. 91 and 96.

Likewise the Investigating Officer took 36 specimen signatures from accused No.2 Rajnikant Kushaldas Shah on six paper-sheets each containing six specimen signatures in presence of Panch witnesses under Panchnama Exh. 73. That six paper-sheets are at Exh. 74 to 79.

By following same procedure, the Investigating Officer took specimen signatures of accused No.3 Mansukhlal Ladkchand on six paper-sheets each containing six specimen signatures in presence of Panch witnesses under Panchnama Exh. 100 and those six paper-sheets are on record at Exh. 105 to 110.

In the like manner, the Investigating Officer also took 36 specimen signatures of accused No.4 on six paper sheets each containing six specimen signatures in presence of Panch witnesses under Panchnama Exh. 73. That six paper-sheets bearing specimen signatures of Accused No.4 are on record at Exh. 80 to 85.

As per the case of the prosecution, disputed documents Exh. 44 to 47 of which production was made by accused No. 1 to 3 in the Union Bank of India to get opened Cash Credit Account, were seized under Panchnama exh. 99, and that four documents were produced by P.W. 2 P.H. Parekh.

It is the case of the prosecution that to compare the signature "P.V. Sanghvi" on each of four disputed documents, Exh. 44 to 47 with admitted document bearing natural signature of complainant Exh. 48, the Investigating Officer had sent specimen signatures of four accused, exh. 74 to 79, 80 to 85, 91 to 96 and 105 to 110 to the Handwriting Expert through District Superintendent of Police, Surendranagar. While forwarding the said disputed documents, admitted document and six paper-sheets sheets bearing specimen signatures of each accused to the Handwriting Expert, one letter Exh. 118 was addressed by the Investigating Officer to Handwriting Expert, wherein two questions were framed seeking opinion of the Handwriting Expert. The first question was to the effect as to whether disputed documents Exh. 44 to 47 were signed by accused No.4 and another question was whether signature on admitted document, Exh. 48 bearing natural signature of complainant is resembling to subsequent signatures given

by accused No.4 and therefore pointed questions were asked as to whether disputed documents were signed by accused No.4 or not. When a specific information was sought by the Investigating Officer from the Handwriting Expert, it can well be inferred that Handwriting Expert must have made full concentration in making comparison of signature - `P.V. Sanghvi' on documents Exh. 44 to 47 with specimen signatures given by accused No.4 (i.e. Exh. 80 to 85).

Here, in the present case, as said earlier, the entire case of the prosecution rests on the opinion of Handwriting Expert. There is no other corroborative piece of evidence connecting the accused with the crime.

#. The prosecution has examined Shri Gajendraprasad Shantilal Acharya at Exh. 116 who has given his evidence as a Handwriting Expert. His written opinion, Exh. 120 reads as follows:-

"Opinion

Resultant upon a careful examination of all the documents relating to this cases I am of opinion that :

The blue-encircled disputed signatures marked A1/1, A1/2, A2, A3 and A4/1 to A4/4 are written by the writer of specimen documents marked B19/1 to B19/6.

Ahmedabad (C.S.Acharya)
Dt:30/8/89 Asstt. Examiner of Questioned Docts.,
H.P.B.G.S. Ahmedabad"

#. As per above written opinion, disputed four documents Exh. 44 to 47 were written by a person who gave specimen signatures, Mark B-19/1 to B-19/6 (Exh. 80 to 85), i.e., accused No.4 Shri Pravinchandra Fatechand Shah, who was a Manager of the Union Bank of India at the relevant point of time.

In spite of above definite written opinion, Exh. 120, Shri G.S. Acharya who has deposed as Handwriting Expert has deposed in Para 30 of his evidence that said disputed documents Exh. 44 to 47 were written by a person who gave specimen signatures mark B-13/1 to B-13/6 to B-18/1 to B-18/6, i.e. Exh. 74 to Exh. 79. Hence, as per this evidence the Handwriting Expert has deposed that disputed documents were written by accused No.2 Rajnikant Kushalchand Shah, and therefore this Handwriting Expert while giving his opinion changed his

version quite contrary to his written opinion Exh. 120. As per written opinion, Exh. 120 the disputed four documents Exh. 44 to 47 were written by accused No.4, i.e. Manager of the Union Bank of India, and while giving oral evidence he has deposed that said disputed documents were prepared by accused No.2 Rajnikant K. Shah. He has tried to explain this difference seen in written opinion and oral evidence. He has tendered separate reasons for written opinion in his evidence at Exh. 121. As per his evidence what he has stated in written opinion Exh. 120 for specimen signatures Mark B-19/1 to B-19/6 (Exh.80) is not correct. As per his evidence it ought to be a person who gave specimen signatures, Mark B-13/1 to B-13/6 to B-18/1 to B-18/6 (i.e. Exh. 74 to Exh. 79). He has further deposed that what is typed in Exh. 120 for Mark B-19/1 to B-19/6 is a typographical mistake, and thus there is a serious contradiction between written document Exh. 120 and oral evidence of Handwriting Expert. No doubt, he has tried to explain that contradiction/difference by tendering Reasons Exh. 121.

#. If we peruse Exh. 121 which is under heading "REASONS" we find that Handwriting expert has not deleted the writing - "B-19/1 to B-19/6." On the contrary he has stated as follows:-

"i.e. B-13/1 to B-13/6 upto B-18/1 to B-18/6"

Therefore from reasons Exh. 121 it appears that a writing with regard to "B-19/1 to B-19/6" which is typed is kept as it is and writing "B-13/1 to B-13/6 to B-19/1 to B-19/6" which is written in ink handwriting was added later on.

Thus Hand-Writing expert has given two different versions, one against accused no. 2 and another against accused No.4. It is the case of this Handwriting Expert that what is stated against accused No.4 in Exh. 120 was written by mistake. If it was really a mistake, then, this Handwriting Expert must have written in his reasons Exh. 121 that what is written in Exh. 120 is typed by mistake. As said earlier the Investigating Officer had by his letter Exh. 118 sought opinion from the Handwriting Expert as if disputed four documents Exh. 44 to 47 were signed by accused No.4. First, he gave his written opinion exh. 120 against accused No.4 as demanded by the Investigation Officer. It appears that something had happened after written opinion Exh. 120 was forwarded to the Investigating Officer, as a result of which reasons Exh. 121 came into existence. Exh.

120 is dated 30-8-1989 and therefore an attempt has been made by the prosecution that these two documents were prepared on the same day. If the Handwriting Expert had come to know about his mistake which occurred in Exh. 120, he would have certainly made a specific note of it in Exh. 121 that by mistake a reference of specimen signatures B-19/1 to B-19/6 (Exh. 80) has been made in opinion Exh. 120. No such reference is there in Exh. 121. For a moment if it is believed that "Reasons" Exh. 121 was prepared on 30-8-1989, then nobody prevented Handwriting Expert to correct his written opinion, Exh. 120 which he prepared on the same day, i.e. 30-8-1989. Before sending Exh.120 to the Investigating Officer Handwriting Expert could have made necessary corrections with his initials in his written opinion, Exh. 120. I do not find any such amendment or correction in opinion Exh. 120. It may be noted that said Handwriting Expert sent Exh. 120 only along with other papers to Investigating Officer. On that day he did not send paper-sheet of reasons, Exh. 121 to the Investigating Officer. Investigating Officer received Exh. 120 on or about 6-9-1989. If really the Handwriting Expert had prepared reasons, Exh. 121 on 30-8-1989 by mistake, and if he forgot to forward that Exh. 121 along with Exh. 120 to the Investigating Officer, he could have immediately sent exh. 121 on the next day or within a reasonable time. He has not done so. He kept Exh. 121 with himself till he produced in the case when he gave his oral evidence in trial Court on 18-6-1990. This conduct of Hand-Writing Expert speaks volumes for it. He is the best person to explain as to why he did not send Exh. 121 along with Exh. 120 to the Investigating Officer and as to why he did not bring to the notice of Investigating Officer to his mistake occurred in Exh. 120 about disputed four documents Exh. 44 to 47 having been written by accused No.4, and thus this is a case in which two different types of evidence of Handwriting Expert are led.

##. Handwriting Expert has deposed in his evidence, Exh. 116 that he had taken photographs of disputed documents. Such photographs have not been furnished to accused. A serious dispute with regard to non-supply of photographs taken by Hand-Writing Expert to accused No.2 and 4 is taken by Shri J.T. Trivedi. He has cited a case of Pravinkumar Lalchand Shah v. State & Anr. reported in 1982(1), 23(1) GLR 116. In this case, this Court has observed in paragraph 13 as follows:-

"It was submitted on behalf of the State that this judgment merely shows that the magistrate is

to see that the documents referred to under Sec. 173 have been furnished to the accused. It is therefore the submission that if the prosecution does not rely on the documents themselves, those documents will not be the documents referred to in Sec. 173 and therefore the documents are not required to be given to the accused. We have to appreciate that under Sec. 207 of the Criminal Procedure Code (1973), the Magistrate has to supply those documents. But prior to that the Magistrate has to be satisfied and in this very Supreme Court judgment it has been observed that if the Magistrate finds that some documents are not supplied, then the Magistrate should see to it that it is done. Those powers of the Magistrate or the Court still continue and if the Court finds that the police officer has not sent the requisite document required under Sec. 173(5)(a), then it can certainly direct their production. This we have already considered. But the important observations of the Supreme Court in Narayan Rao's case (supra) are as follows:

"The provisions contained in sec.. 173(4) and Sec. 207A(3) have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading up to a Sessions trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought, to see that all the documents, necessary to give the accused persons all the information for the proper conduct of their defence, are furnished" (Emphasis supplied)

The portion which we have emphasised would clearly show that the Court has not merely to be satisfied by referring to only the documents sent by the police along with the report but the Court has to see that the accused person must have all the information for the proper conduct of their defence. If it can well be said that the necessity of enlarged photographs is there for the defence of the accused, then that cannot be denied to him. We have already considered from the books referred to above that necessity of enlarged Photographs is there not only for the

> expert to reach an opinion but it would be also necessary for the Court to come to a proper conclusion about the writings. It does not require to be stressed that the opinion of a handwriting expert is merely an opinion evidence and it is not exclusive. It merely corroborates the evidence led by the witnesses who are familiar with the writings. But in order to come to the conclusion whether the disputed writing is forged or otherwise the prosecution as well as the defence and the court will be required to look to the writing and especially the Court shall have to form its own opinion. In order to form this opinion it has been considered by the experts that the presence of enlarged photographs would be of greater assistance and if that is necessary for the Court, can it be said that they are not the documents which are required to be produced in the Court? In the case of State (Delhi Administration v. Pali Ram reported in AIR 1979 SC 14, the Supreme Court has observed; "It is not the province of the expert to act as Judge or Jury. The real function of the expert is to put before the Court all the materials."

It is vehemently argued by Shri J.T. Trivedi, learned advocate for respondent No.4 that in view of above legal position it is not sufficient for the prosecution to supply only the documents on which it relies. In such type of cases, as argued by him, all the information for proper conduct of defence are required to be furnished. He has further argued that when it is admitted on the part of the Handwriting Expert that he had taken photographs of disputed documents, namely, Exh. 44 to 47, then those photographs ought to have been furnished both to the accused and the Court. He has further argued that enlarged photographs are necessary not only for the Expert to reach an opinion but that photographs are necessary for the court to come to a proper conclusion about the writings.

Here, in this case, prosecution has withheld photographs of disputed documents. Handwriting Expert Shri Acharya has deposed in his evidence in Exh. 36 that though he had taken about 6 to 7 photographs, he has not produced such photographs in the case. For non-supply of photographs he has assigned a reason that he does not rely on these photographs and therefore he has not furnished the copies to the accused and such photographs were also not produced in the Court. If it was not necessary for him to take photographs for comparison of

signatures on disputed documents as well as admitted documents, then there was no reason for him to take photographs. This act of taking photographs clearly suggests that Handwriting Expert was not satisfied with mere comparison of documents with naked eyes. He felt it necessary to take photographs of the disputed documents but now he says that he does not rely on those photographs. This conduct of Handwriting Expert creates a serious doubt as to why he has not produced photographs though taken by him. In view of the legal position settled in the aforesaid case of Pravinkumar Lalchand Shah (supra) it is not sufficient for Handwriting Expert to say that he does not rely on photographs. When photographs are taken then that photographs are required to be produced in the case with a view to assist the Court. The Court can come to a proper conclusion about the writings if such photographs are produced and therefore an excuse given by Handwriting Expert for not furnishing the photographs to the accused is a lame excuse to hide something from the Court, more particularly when his opinion is self-contradictory. At one breath in written opinion exh. 120, he says that disputed documents Exh. 44 to 47 are written by accused No. 4 and at the second breath he has deposed that it was a mistake. As per his evidence his say is that said disputed documents were written by accused No.2. In such type of situation, the photographs are very much necessary for examination by the Court also. Had the prosecution produced the photographs taken by Handwriting expert, certainly, the lower court could have examined those photographs u/s. 73 of the Indian Evidence Act to come to a proper conclusion about the disputed documents Exh. 44 to 47.

##. For a moment if it is believed that as per his explanation given in his evidence together with reasons Exh. 121, then, by making reliance on that opinion of Handwriting Expert either accused No.2 or accused No.4 cannot be convicted. There requires some corroboration from other evidence, to lend assurance for accepting the opinion of Handwriting Expert. In case of Magan Behari Lal v. The State of Punjab reported in 1977 SC 1091, the Hon'ble Supreme Court has observed in paragraph 7 as follows:-

> "It is true that B. Lal. the handwriting expert, deposed that the handwriting expert, deposed that the handwriting on the forged Railway Receipt Exh. PW 10/A was that of the same person who wrote the specimen handwritings Ex. PW 27/37 to 27/57, that is the appellant,

but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution then the opinion of a handwriting expert. There is a profusion of presidential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P., AIR 1957 SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad v. Md. Isa, AIR 1963 SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar v. Subodh Kumar, AIR 1964 SC 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever taken the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. AIR 1967 SC 1326 and if uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

In case of Ala Uddin v. Sishir Kumar Dutta reported in AIR 1989 Gauhati 42 also it is observed in paragraph 4 as follows:-

"In the Evidence Act, for proving handwriting the opinion of expert and of persons acquainted with the handwritings of the persons concerned have been made relevant under S.45 and S.47 respectively. Both under S.45 and S.47, the evidence is an opinion, in the former by a

scientific comparison and in the latter on the basis of familiarity resulting from the frequent observations and experience. However, the opinion of handwriting expert is not conclusive. The opinion of an expert is fallible or liable to error like any other witness. still it cannot be brushed aside as useless."

##. Keeping in mind the above legal position with regard to opinion of Handwriting Expert an evidence of Handwriting Expert is a weak evidence and case cannot be said to have been proved only by placing reliance on the report of the Handwriting Expert. There should be some piece of corroborative evidence either of oral or circumstantial, to give corroboration to Handwriting Expert's opinion. Here in this case, except an evidence of Handwriting Expert no other evidence to prove the case against the accused is led by the prosecution.

##. The learned Magistrate has dealt with an evidence of Handwriting Expert in paragraphs 11 to 16 of his Judgment Exh. 138. He has given plausible reasons in detail as to why he is not accepting the evidence of Handwriting Expert. Those reasons are based on legal propositions as discussed earlier. This Court also finds that there cannot be any other conclusion than the conclusion to which the learned Magistrate has arrived at to disbelieve the evidence of Handwriting Expert. This Court is in full agreement with the reasons assigned by the learned Magistrate for not accepting an evidence of Handwriting Expert and therefore this Court does not find it necessary to repeat the same reasons again in this Judgment.

##. This is an acquittal appeal. In case of Babu and others v. State of Uttar Pradesh reported in AIR 1983 SC 308, the Hon'ble Supreme Court has given guidelines for Appellate Courts when acquittal appeal is before them. In paragraph 18, it is observed as follows:-

"The reasons given by the Sessions Court appear to be more plausible on the materials on the record. In any case, even if two views were possible, the High Court should not have interfered with the conclusions arrived at by the Sessions Court unless the conclusions were not possible. If the finding reached by the trial Judge cannot be said to be unreasonable, the Appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record because

the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The Appellate Court, therefore, should be slow in disturbing the finding of fact of the trial court and if two views are reasonably possible of the evidence on the record, it is not expected to interfere simply because it feels that it would have taken different view if the case had been tried by it. This Court in State of U.P. v. Samman Dass, (1972) 3 SCR 58: (AIR 1972 SC 677) dealing with a similar situation laid down the following postulates (para 32 of AIR):

"There are, however, certain cardinal rules which have always to be kept in view in appeals against acquittal. Firstly, there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the Court below; secondly if two views of the matter are possible, a view favourable to the accused should be taken; thirdly, in case of acquittal by the trial Judge, the appellate Court should take into account the fact that the trial Judge has the advantage of looking at the demeanour of witnesses; and fourthly, the accused is entitled to the benefit of doubt."

##. Keeping in mind the above legal position, for acquittal appeal before the Appellate Court and looking to an evidence of Handwriting Expert together with his written opinion Exh. 120 and reasons Exh. 121, this Court is of the opinion that it is not possible to come to a different conclusion on the basis of evidence discussed by the learned Magistrate and therefore there is no substance in this appeal.

This appeal deserves to be dismissed and therefore this appeal is dismissed confirming the acquittal of the accused by the lower Court.

(H.H. Mehta, J)